

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

FREDERICK W. PAYNE *et al.*,  
Plaintiffs,

v.

Case No. CL 17 - 145

CITY OF CHARLOTTESVILLE, VIRGINIA *et al.*,  
Defendants.

### Motion To Strike Duplicate Defenses

Come now Plaintiffs, by counsel, and move this Honorable Court to strike duplicate defenses contained in the Defendants' pleadings for the reasons hereinafter set forth.

1. It is long settled law that while Defendants may plead all their defenses, they cannot duplicate defenses: they cannot "file special pleas setting up defenses by a plea already received." *Virginia Fire & Marine Ins. Co v. Buck et al.*, 88 Va. 617, 13 S.E. 973 (1891). Redundant pleadings of the same defenses confuse the finder of fact, complicate the litigation, and create the hazard of inconsistent rulings. The Court's proper response is "to reject the plea, or strike it out, if it has been entered on the record." *Id.*

2. The Defendants admit in their February 12, 2018 reply to the Plaintiffs' memo on the evidentiary objection on legislative immunity, that both the "Plea in Bar and a Demurrer rais[ed] legislative immunity, and other grounds for immunity." Defendants' Reply to Plaintiffs' Memo ¶ 1 [emphasis added]. The Defendants also raised legislative immunity a third time as an affirmative defense in their answer to the amended complaint. They raised it again in their objection to discovery, and again in the hearing on February 5, 2018, when they objected to evidence that the covers on the monuments are meant to be permanent, citing and arguing the *Blankenship* case. The Court cannot be asked to rule on the same issue five times.

Wherefore Plaintiffs respectfully request the Court to rule on legislative immunity either in the demurrer, or as to the February 5, 2018 discovery objection, and otherwise strike out the duplicated defenses in the Defendants' pleadings.

FILED  
2/22/18 10:40  
(Date & Time)  
City of Charlottesville  
Circuit Court Clerk's Office  
Liezelle A. Dugger, Clerk  
By [Signature]  
Deputy Clerk

FREDERICK W. PAYNE *et al.*

By: \_\_\_\_\_

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Certificate

I certify that I caused a true and exact copy of the foregoing motion to strike duplicate defenses to be hand delivered to Lisa Robertson, Esq., Charlottesville Deputy City Attorney, City Hall, 605 East Main Street, Charlottesville, Virginia 22902 and to Richard H. Milnor, Esq., Taylor, Zunka, Milnor & Carter, 414 Park Street, Charlottesville, Virginia 22902, counsel for Defendants, this 20<sup>th</sup> day of February, 2018.

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